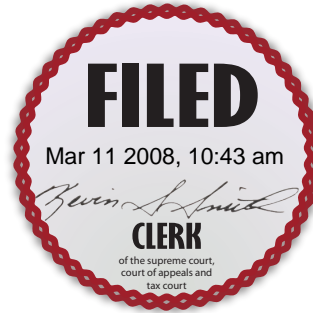


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD G. WOOD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A04-0701-CR-16

APPEAL FROM THE MADISON COUNTY COURT
The Honorable Thomas L. Clem, Judge
Cause No. 48E02-0503-FD-00139

March 11, 1008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Ronald G. Wood (“Wood”) was convicted in Madison County Court of Class C misdemeanor operating a vehicle with a BAC of .08 or more; Class A misdemeanor operating a vehicle while intoxicated endangering a person; and Class D felony operating a vehicle while intoxicated. Wood was also adjudicated a habitual substance offender. Wood was sentenced to an aggregate sentence of ninety-six months. The trial court denied Wood’s motion to set aside the verdict and request to correct errors. We restate the issue as whether the trial court abused its discretion in denying Wood’s motion to set aside the verdict. We affirm

Facts and Procedural History

On March 18, 2005, Wood was arrested following a traffic stop after a police officer noted erratic driving. On March 30, 2005, the State charged Wood with Class C misdemeanor operating a vehicle with a BAC of .08 or more; Class A misdemeanor operating a vehicle while intoxicated endangering a person; and Class D felony operating a vehicle while intoxicated. On April 12, 2005, the State amended the information and added a fourth count of Habitual Substance Offender.

On July 11, 2006, at the beginning of Phase 1 of a trifurcated jury trial, the State presented an opening statement but did not do so during Phase 2 and 3. Ultimately, Wood was found guilty as charged. In Phase 1, the jury found Wood guilty of Class C misdemeanor operating a vehicle with a BAC of .08 or more; Class A misdemeanor operating a vehicle while intoxicated endangering a person. In Phase 2, the jury found Wood guilty of Class D felony operating a vehicle while intoxicated. Finally, in Phase 3, the jury found Wood guilty of being a habitual substance offender.

Wood filed a motion to set aside verdict that the trial court denied.¹

Wood appeals.

Discussion and Decision

Wood argues that the trial court abused its discretion by denying his motion to correct error and set aside the verdict because the State failed to give an opening statement during Phases 2 and 3 of the trifurcated jury trial. The State contends that Wood waived any claim regarding the absence of an opening statement because Wood did not object at trial to this absence.

Indiana Code section 35-37-2-2(1) (2004) provides, in part:

After the jury is impaneled and sworn, the trial shall proceed in the following order:

(1) The prosecuting attorney shall state the case of the prosecution and briefly state the evidence by which he expects to support it, and the defendant may then state his defense and briefly state the evidence he expects to offer in support of his defense.

Wood states that he preserved this issue for appellate review. However, our review of the trial transcript reveals that Wood did not object to the State's failure to provide an opening statement during Phases 2 and 3.

Generally, a contemporaneous objection is required to preserve an issue for appeal. Rembusch v. State, 836 N.E.2d 979, 982 (Ind. Ct. App. 2005) trans. denied. The purpose of this rule is to promote a fair trial by precluding a party from sitting idly by and appearing to assent to an offer of evidence or ruling by the court only to cry foul when the outcome goes against him. Id. at 983. Wood waived the issue when he failed to

¹ Appellant failed to include the order from which he is appealing. Ind. App. Rule 46(A)(10) states that "[t]he brief shall include any written opinion, memorandum of decision or findings of fact and conclusions thereon relating to the issues raised on appeal." (Emphasis added).

contemporaneously object to the prosecutor's failure to provide an opening statement during Phases 2 and 3 of the jury trial. We therefore deem the issue waived for lack of a timely objection.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.